

**The Iowa Supreme Court**

**FILED**

FEB 14 2017

CLERK SUPREME COURT

**Request for Public Comment on  
Family Law Task Force Proposal  
to Develop Statewide Uniform  
Mediation Requirements in Family  
Law Cases**

**Order**

In 2015, the supreme court established the Family Law Case Processing Reform Task Force (Task Force) “to identify best practices for accessible, transparent, and consistent family law processes and to propose recommendations for new court processes and improvements to current processes for statewide adoption.” A recommendation of the task force, contained in its May 31, 2016, report, is to develop uniform mediation requirements that would “[e]stablish a statewide mediation program for family law cases with opportunities for mediation and settlement conferences.” The task force report is available at <http://www.iowacourts.gov/Administration/Reports/>, and the uniform mediation recommendations appear at pages 12–14.

The Task Force noted Iowa legislation in 2000 directed the supreme court to “establish a dispute resolution program in family law cases,” including development of mediation rules and standards and qualifications for court-appointed mediators. The legislation followed earlier recommendations of the court’s Mediation Study Group. During the ensuing years, mediation programs have developed differently among the eight judicial districts, with varying rules and requirements across the state.

Prior to further consideration of a uniform, statewide mandatory mediation program for family law cases, the supreme court seeks public comment on this task force recommendation:

Implement a uniform requirement for mediation in advance of

temporary order hearings and final trials in family law cases, with a waiver option for cases involving domestic violence or other good cause.

The Task Force has prepared a synopsis of its reasons supporting this recommendation, "The Impetus for Family Law Mediation Reform in Iowa," which is provided with this order. The court also seeks comment on whether judicial districts should be allowed to continue their own forms of mediation or judicial settlement conferences rather than a uniform, statewide mandatory mediation program.

Any interested organization, agency, or person may submit comments regarding the task force recommendations for the development of a statewide mediation program in family law cases. Comments sent by email must be emailed to **rules.comments@iowacourts.gov**, must state **"Proposed Mediation Program"** in the subject line of the email, and must be sent **as an attachment to the email in Microsoft Word format**. Instead of submission by email, comments may be delivered in person or mailed to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

Any comments received may be posted on the Iowa Judicial Branch website.

**The deadline for submitting comments is 4:30 p.m. on April 17, 2017.**

Dated this 14th day of February, 2017.

The Iowa Supreme Court

By   
Mark S. Cady, Chief Justice

FEB 14 2017

CLERK SUPREME COURT

**The Impetus for Family Law Mediation Reform in Iowa**

In 2014, the Iowa Supreme Court established the Family Law Case Processing Reform Task Force ("Task Force") in response to the increasing demands on state courts and demonstrated public desire for faster, less expensive, and less adversarial means of addressing family law issues, including dissolution, custody, and modification actions. In examining these issues, the Task Force's Alternate Dispute Resolution ADR Subcommittee ("ADR Subcommittee") reached out across Iowa to gather a broad cross-sampling of regional family law and mediation experts. An outstanding team of Iowa family law professionals was assembled including judges, law professors, lawyers, mediators, and court system employees. The ADR Subcommittee sought further experienced guidance from experts in family law case processing across Iowa and the nation. Direct assistance was provided by William J. Howe III, Esq., of Oregon, and Professor Andrew Schepard of Hofstra University, with additional support from The Iowa State Bar Association, the Association of Family and Conciliation Courts, and the Institute for Advancement of the American Legal System.

As the frequency of separated and divorcing parents increases, combined with the enormous state-wide and national increase in self-represented litigants, seeking an alternative means to assist Iowans in a less adversarial and lower cost forum has become a necessity. Mediation is beneficial to Iowa families because it allows for more direct involvement, decision-making, and ownership of the outcomes in family law cases. Additionally, even mediations that do not fully resolve all issues in dispute often shorten the length of matters that do proceed to court. As such, we recommend the immediate implementation of mandatory mediation prior to all family law temporary hearings and final hearings in every district in the state of Iowa.

**National Mediation Studies and Data**

As part of the work of the ADR Subcommittee, in addition to examining Iowa's family law mediation programming, we reviewed national research from the Institute for the Advancement of the American Legal System (IAALS) and Dr. Robert E. Emery, Director of the Center for Children, Families, and the Law (CCFL), University of Virginia, regarding mediation outcomes in family law cases.

In its examination of other state mediation programs, the IAALS found that ADR as a first line of conflict resolution in family law matters simply makes sense.<sup>1</sup> "Mediators stimulate parents' consideration of their own interests, and seek to find common ground and compromises that will result

<sup>1</sup> Rebecca Love Kourlis et al., *IAALS' Honoring Families Initiative: Courts and Communities Helping Families in Transition Arising from Separation or Divorce*, 51 Fam. Ct. Rev. 351 (2013), available at [http://iaals.du.edu/sites/default/files/documents/publications/courts\\_and\\_communities\\_helping\\_families\\_in\\_transition\\_arising\\_from\\_separation\\_or\\_divorce.pdf](http://iaals.du.edu/sites/default/files/documents/publications/courts_and_communities_helping_families_in_transition_arising_from_separation_or_divorce.pdf)

in creative solutions to impasses.”<sup>2</sup>

Mediating couples report liking the focus on the children, the chance to air grievances, the opportunity to discuss real issues, and having the discussion kept on track. . . Research shows that both men and women are more satisfied with mediation than with the adversarial process. 77% of mediating couples are pleased with the mediation process, but only 40% of litigating couple are satisfied with court procedure. *In fact, 50% to 70% of those litigating express active dissatisfaction with the legal system.*<sup>3</sup>

Statistically, families who mediated were more able to settle their differences, reduce expenses, and were better able to reengage with each other as co-parents, as compared to those who solely litigated their cases.<sup>4</sup>

Dr. Robert Emery’s mediation research study is viewed as one of the most authoritative long-term mediation studies in the nation.<sup>5</sup> Researchers followed families for twelve years recording levels of conflict, post decree litigation, levels of parenting and parent/child interactions.<sup>6</sup> The research group was identified as “high conflict” and was randomly assigned to mediation or adversarial settlement.<sup>7</sup> Of those assigned to adversarial settlement, 75% appeared before a judge.<sup>8</sup> Of those assigned to mediation, less than 20% appeared before a judge, and “[e]ven when mediation failed, parents tended to settle out of court with the help of their lawyers.”<sup>9</sup>

Compared to the dramatic drop off in parental contact with children after a typical divorce, families who mediated had higher involvement post order with their children as compared to those who solely litigated. For example, “28% of noncustodial parents who mediated saw their children weekly 12 years later compared to 9% who litigated and 11% in the national averages.”<sup>10</sup> Changes in telephone contact were even more dramatic. Fifty-two percent of nonresident parents who mediated talked with their children weekly 12 years later, compared to 14% of nonresident parents who litigated and 18% in the national average.<sup>11</sup> An abstract of Dr. Emery’s findings can be found at:

[http://www.emeryondivorce.com/divorce\\_mediation\\_study.php](http://www.emeryondivorce.com/divorce_mediation_study.php).

When parents are able to return to high levels of co-parenting, children benefit greatly by having both parents involved, and this impacts all facets of the children’s lives, including familial,

<sup>2</sup> *Id.* at 362-63.

<sup>3</sup> *Id.* at 362 (emphasis added).

<sup>4</sup> *Id.*

<sup>5</sup> Robert E. Emery et al., *Child Custody Mediation and Litigation: Custody, Contact, and Coparenting 12 Years After Initial Dispute Resolution*, 69(2) J. Consult. Clin. Psychol. 323-332 (2001).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

social, and academic. It is not so much that mediation is a better option, but the alternative is disruptive and caustic to family systems. As such, timing is everything when it comes to families and resolving conflict. Early intervention and pre-trial mediation supports the ability of families to begin working towards re-establishing communication, levels of trust, parenting, and putting the children first. This allows for a return to a new normalcy for the family, parents, and most importantly, the children.

#### **District Mediation Programs in Iowa**

Although the Iowa Legislature authorized the district courts to order mediation in all domestic relations cases, with exceptions, in 1996, not all judicial officers or lawyers believed in the need for mediation or in its efficacy.<sup>12</sup> While acceptance of mediation in family law matters has increased with the passage of time, the Iowa Judicial Branch has struggled to advance the establishment of a statewide dispute resolution program in family law cases as authorized by the original legislation. However, court-annexed family law mediation has successfully existed in some Iowa districts for over 20 years.

The ADR Work Group conducted an informal survey of the chief judges, judges, and court administrators of each of Iowa's judicial districts regarding current family law mediation programs. A sampling of responses is below:

##### ***First District***

A family law mandatory mediation program has operated in Blackhawk County since 2013 and Dubuque county since 2014. According to the perception of Judge Kellyann Lekar, Chief Judge of the First Judicial District, "our requirement of mediation before a temporary matters hearing has greatly reduced the number of temporary matters hearings we conduct and has made those that we do conduct easier because there is usually some partial agreement." Statistics provided by Jim Mahoney, judicial specialist for the First District, show a continual decline in the number of trials and an increase in the number of stipulated agreements since the implementation of the mediation programs.

##### ***Second District***

In May 2010, Judge Timothy Finn implemented a Pilot Family Mediation Project in Story and Boone Counties. According to Judge Finn, "there is no doubt that the mediation program is leading to fewer actual trials of cases in Story and Boone County." Judge Finn further recognized the need to create "a consistent plan for the entire district." According to Scott Hand, District Court Administrator, mediation requires "the parties and attorneys to evaluate their cases and communicate early on in the process, thereby leading to many stipulated

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<sup>12</sup> See Iowa Code § 598.7.

parenting plans and resolution.” Further, “cases being mediated are being resolved sooner.”

#### ***Third District***

In September 2013, Judge Jeffrey Neary implemented a pilot program in the Third District that afforded judges the option to refer family law cases to mediation. After implementation, the average number of trial dates decreased – from 1.6 per case to 1.1 per case. The average days to decree also dropped from 249 to 211. An approved mediator roster was also developed.

#### ***Fourth District***

Since 2009, the Fourth District has had a mandatory family law mediation program coordinated through the Southwest Iowa Mediation Center (SWIAMC). According to Senior Judge Timothy O’Grady, “mediation has promoted more open communication between divorcing spouses” and “reduced the contentiousness in resolving custody and visitation issues and helped to make the process less stressful for the children of divorcing parents.” He further stated, “from the standpoint of the court system, better communication between divorcing spouses concerning custody has reduced the number of trials on those issues” and “mediation settlements hold up well because the parties feel they have more control of the terms.” The number of trial on petitions to modify custody have also been reduced since implementation of the mediation program. Since the program began, 78% of family law cases have participated in mediation. Of these cases, 81% have reached an agreement on all or some of the custody issues.

#### ***Fifth District***

In the Polk County Family Mediation Program, a comparison of civil dissolution case activity for the years 1999 and 2000 reveals that filings were up 12% but the number of contested trials to the Court were down 17%. They attribute the dramatic reduction directly to the implementation of a mandatory mediation requirement.

#### ***Sixth District***

The Sixth District requires both early intervention mediation as well as pre-trial mediation. Upon implementation of the mediation program in 1996, the number of hearings on temporary custody and visitation dropped 60% in the first year. Research on 150 Linn County cases (50 cases which had mediated an agreement, 50 where the parties stipulated/reached agreement without mediation, and 50 where the parties went to court for a decision) showed that divorced parents who had mediated their divorce decisions were 7-8 times less likely to return to the court for further decisions on custody and visitation issues. In other words, mediation seems to reduce the number of modification trials. According to Carroll Edmondson, District Court



Administrator, "Mediation saves court time in two ways. First, it settles the case and avoids a trial all together. Second, it narrows the issues in a case so that even when the case goes to trial the trial is shorter because some of the issues were resolved influence of mediation."

#### ***Eighth District***

According to Judge Mary Ann Brown, Chief Judge of the Eighth Judicial District, their requirement that parties complete mediation before temporary matters hearings and trials "has dramatically reduced" the number of contested temporary proceedings. Judge Brown further stated that "mediation has had a very positive impact on parents reaching agreements concerning their children.

#### ***General Conclusions***

There is widespread consensus throughout the Iowa judiciary that mediation is beneficial to children and families. A review of the information obtained from the individual districts also reveals that there are different timing requirements regarding when parties with children must mediate. It is our goal to create uniformity throughout Iowa by implementing both early intervention and pre-trial mediation. Uniformity is important so that parties, attorneys, and mediators may rely on consistent practices throughout the state. In matters involving children, it is in their best interests that parties find a less adversarial way of resolving conflict instead of litigation, which can foster continuing animosity, competitiveness, and strain family financial resources. Mediation can empower parents to learn to communicate and resolve important matters involving their children in a more cooperative atmosphere.

#### **Both National and Iowa Data and Experiences Support Early Intervention and Pre-Trial Mediation in Family Law Cases**

***Goal: Mediation shall be required prior to temporary custody and visitation hearings or temporary spousal or child support actions.***

Mediation is more successful the earlier the parties attend mediation after an action has been filed. Moreover, in temporary matters it is important that some issues are resolved quickly. Mediation can assist parties with resolving their temporary issues quickly, and more amicably, than waiting for an adversarial temporary hearing as well as setting a standard for continued mediation for the remaining unresolved issues in their case.

***Goal: Mediation shall be required prior to obtaining a trial date in all matters involving custody and visitation or spousal or child support actions.***

After families have had the opportunity to put to practice the terms of temporary agreements, they are better situated to mediate a final resolution of the issues in their family law matter. By

requiring mediation prior to trial, families will be afforded the opportunity to create solutions that work for their children and their particular set of circumstances. Further, decrees that are entered based upon mediated settlement agreements are shown to be less subject to modification, thereby saving judicial involvement in the future.

The implementation of mediation requirements at both the pre-temporary hearing stage and the pre-trial stage will help promote many positive outcomes for families and children in Iowa. Mediation is also a proven means of alleviating the workload on ever more demanding district court dockets. As Judicial Branch resources continue to be strained, district courts still must have adequate staff and time to process family law cases in a fair and efficient matter. By expanding the use of mediation in Iowa's family law cases, courts can then devote more time to those matters that need court intervention the most: where protection must be afforded for victims; where essential facts are disputed; and where parties' compliance with terms must be assured through court order. This recommendation also includes a mandatory domestic abuse screening. Mediation is a proven tool that will substantially assist the Iowa Judicial Branch in fulfilling its mission to "administer justice according to law equally to all people providing independent and accessible forums for the fair and prompt resolution of disputes" for all Iowans.

Respectfully submitted,

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